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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,406	01/06/2004	Anthony G. Lutfallah	1247 P 290	3878

7590

07/06/2006

PAUL J. NYKAZA, ESQ.  
WALLENSTEIN WAGNER & ROCKEY, LTD.  
53RD FLOOR  
311 SOUTH WACKER DRIVE  
CHICAGO, IL 60606-6630

EXAMINER
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LUGO, CARLOS

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/752,406	LUTFALLAH, ANTHONY G.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Carlos Lugo	3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 24 and 30-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24 and 30-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. This Office Action is in response to applicant's amendment filed on April 25, 2006.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 24 and 30-35 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,806,900 to Bratcher et al (Bratcher) in view of US Pat No 6,575,681 to Kojima et al (Kojima).

Regarding claim 24, Bratcher discloses a window stop (10, see Figures 1-9) that comprises a housing (12) defining a cavity and having a mount structure capable of being mounted to a wall having a thickness between a minimum and a maximum thickness; a bolt (14) mounted inside the housing; biasing means (16 and 18); a cover (32) defining a lip; and a resilient tab or extension member (34). The bolt is moveable between an extended and a retracted position (Figures 7 and 8).

Bratcher fails to disclose that the engagement surface is inclined with respect to the lip and that comprise at least one ridge or protrusion making the surface as a variable surface and where at least one ridge or protrusion is inclined away from the lip. Bratcher illustrates that the engagement surface is parallel with respect to the lip.

Kojima teaches that it is well known in the art to provide a device that is going to be mounted into a frame with a resilient tab (40) having an inclined, planar and smooth engagement surface with respect to a lip (21) of a cover (20) that comprise at least one ridge or protrusion (41a-c) making the surface as a variable surface and where at least one ridge or protrusion (41c) that is inclined away from the lip so as to make the device capable of being mounted to different thickness of the frame (Figures 7a-7c).

Kojima further illustrates that the engagement surface is spaced from an end wall (31) and that a distal end of the tab is spaced from the end wall when the tab is in an unflexed position (Figure 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the resilient tab described by Bratcher with an inclined engagement surface, as taught by Kojima, in order to secure the latch into the notch or opening on a wall or at a frame having any thickness.

#### ***Response to Arguments***

4. Applicant's arguments filed on April 25, 2006 have been fully considered but they are not persuasive.

With respect to the applicant's arguments regarding establishing of obviousness (Page 5 Line 10), a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill without any specific hint or suggestion in a particular reference.

With respect to applicant's arguments that Kojima is not considered as analogous art (Page 5 Line 21), the arguments that a reference is non-analogous to or teaches away from the instant invention are not relevant to a rejection based upon anticipation. Further, since Kojima's device describes a device that is capable of being engaged to a stationary member having different thickness, then Kojima is "clearly" analogous art.

The applicant also argues that Kojima fails to disclose configuring the locking parts in any type of angled or inclined arrangement with respect to the flange (Page 6 Line 12). As clearly seen in Figure 6, Kojima illustrates configuring the locking parts in any type of angled or inclined arrangement with respect to the flange (21). Therefore, the argument is not persuasive.

The applicant also argues that Kojima's device would require significant modification to be incorporated into a window stop (Page 6 Line 21). The applicant is reminded that the rejection is in view of Bratcher, as modified by Kojima; not Kojima, as modified by Bratcher. At the instant, Bratcher illustrates that the engagement surface is parallel with respect to the lip. Kojima is used to demonstrate that it is well known in the art to provide an engagement surface inclined with respect to the lip and that comprise at least one ridge or protrusion making the surface as a variable surface and where at least one ridge or protrusion is inclined away from the lip. Therefore, the argument is not persuasive.

The applicant also argues that Kojima fails to teach a tab having a planar engagement surface distal from the base portion and spaced from the lip and inclined

with respect to the lip (Page 7 Line 4). At the instant, Kojima clearly illustrates that the tab has a planar engagement surface (41c) distal from the base portion and spaced from the lip and inclined with respect to the lip. Therefore, the argument is not persuasive.

The applicant further argues that Kojima fails to disclose that the engagement surface is not smooth (Page 7 Line 27). At the instant, Kojima illustrates that the engagement surfaces are capable of being smooth. Therefore, the argument is not persuasive.

Finally, the applicant argues that new claim 35 is obvious in view of Bratcher, as modified by Kojima (Page 8 Line 14). At the instant, Bratcher, as modified by Kojima,, discloses the invention as claimed.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3676

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number 571-272-7058.

The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

C.L.

Carlos Lugo  
Patent Examiner AU 3676  
June 27, 2006.



BRIAN E. GLESSNER  
SUPERVISORY PATENT EXAMINER